

POSSESSION OF LARGE CAPACITY AMMUNITION MAGAZINE¹
N.J.S.A. 2C:39-3(j)
(For crimes committed on or after December 10, 2018)

Count _____ of the indictment charges the defendant as follows:

(Read Indictment)

The pertinent part of the statute on which this indictment is based is as follows:

it shall be unlawful for any person to knowingly possess any large capacity ammunition magazine.

In order to convict defendant of this offense, you must be satisfied that the State has proved each of the following two elements beyond a reasonable doubt:

1. That Exhibit S-____ is a large capacity ammunition magazine.
2. That defendant knowingly possessed Exhibit S-____ (the alleged magazine).

In regard to the first element that the State must prove beyond a reasonable doubt, a large capacity ammunition magazine means a box, drum, tube or other container which is capable of holding more than 10 rounds of ammunition to be fed continuously and directly therefrom into a

¹ The statute contains certain exemptions including if the person:

- (1) has registered an assault firearm pursuant to N.J.S.A. 2C:58-12, and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army. See N.J.S.A. 2C:39-3(j)(1); or
- (2) has registered a firearm with a fixed magazine capacity or detachable magazine capable of holding up to 15 rounds, pursuant to N.J.S.A. 2C:39-20. See N.J.S.A. 2C:39-3(j)(2); or
- (3) is a member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders. See N.J.S.A. 2C:39-3(g)(1)(a).
- (4) is a law enforcement officer who possesses and carries while off-duty a large capacity ammunition magazine capable of holding not more than 17 rounds of ammunition that can be fed continuously and directly into a semi-automatic firearm. See N.J.S.A. 2C:39-3(g)(1)(b) (Effective 12/19/18); or
- (5) is a law enforcement officer who possesses and carries while off-duty a large capacity ammunition magazine capable of holding more than 17 rounds of ammunition that can be fed continuously and directly into a semi-automatic firearm provided the large capacity ammunition magazine is used with a service firearm issued to the officer by the officer's employer for use in the officer's official duties. See N.J.S.A. 2C:39-3(g)(1)(c) (Effective 12/19/18).

If any of these defenses are raised, the jury should be instructed that the State bears the burden to disprove beyond a reasonable doubt the existence of any statutory exemption.

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semi-automatic firearm. The term shall not include an attached tubular device which is capable of holding only .22 caliber rimfire ammunition.²

A semi-automatic firearm is defined as a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge, or bullet.³

The second element that the State must prove beyond a reasonable doubt is that the defendant knowingly possessed S-_____ in evidence. The word “possess” as used in criminal statutes signifies a knowing, intentional control of a designated thing, accompanied by a knowledge of its character.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

² N.J.S.A. 2C:39-1(y).

³ N.J.S.A. 2C:39-1(x).

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Thus, [defendant] must know or be aware that he/she possessed the item, here the item alleged to be a large capacity ammunition magazine. The State [is] not required to prove that, at the time that he/she knowingly possessed the magazine that the defendant also knew that it was a large capacity ammunition magazine.⁴

Defendant's possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to "possess" within the meaning of the law, the defendant must knowingly procure or receive the item possessed or be aware of his/her control thereof for a sufficient period of time to have been able to relinquish his/her control if he/she chose to do so.

[Choose Appropriate]

ACTUAL POSSESSION

A person is in actual possession of a particular article or thing when he/she knows what it is; that is, the person has knowledge of its character and second, knowingly has it on his/her person at a given time.

CONSTRUCTIVE POSSESSION

The law recognizes that possession may be constructive instead of actual. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

Constructive possession means possession in which the possessor does not physically have the item on his/her person but is aware that the item is present and is able to and has the intention to exercise control over it. So, someone who has knowledge of the character of an item and knowingly has both the power and the intention at a given time to exercise control over it,

⁴ See State v. Reininger, 430 N.J. Super. 517, 538 (App. Div.), certif. denied, 216 N.J. 367 (2013), cert. denied, 572 U.S. 1088 (2014). See also State v. Smith, 197 N.J. 325, 338 (2009).

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either directly or through another person or persons, is then in constructive possession of that item.

JOINT POSSESSION

The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint; that is, if they knowingly share control over the article.

[MERE PRESENCE – Read if Appropriate⁵]

Defendant's mere presence at or near a place where [contraband] is/are discovered is not in itself, without more, proof beyond a reasonable doubt that defendant was in constructive possession of [that contraband]. It is, however, a circumstance to be considered with the other evidence in determining whether the State has proven possession of the [contraband] beyond a reasonable doubt.

Where defendant is one of the persons found in the area where [contraband] is/are discovered, you may not conclude, without more, that the State has proven beyond a reasonable doubt that he/she had possession of the [contraband] unless there are other circumstance(s) tending to permit such an inference to be drawn.⁶ Such evidence can include, but is not limited to [choose as appropriate]: placement and accessibility of the [contraband]; defendant's access to and connection with the place where the [contraband] was/were found; his/her proximity to the place where the [contraband] was/were found; his/her demeanor when confronted by police after the [contraband] was/were found; whether defendant made any inculpatory statements after the

⁵ State v. Randolph, 228 N.J. 566, 590-93 (2017).

⁶ State v. Jackson, 326 N.J. Super. 276, 280 (App. Div. 1999); See State v. Brown, 80 N.J. 587, 593 (1979) and State v. Sapp, 71 N.J. 476 (1976), rev'g on dissent 144 N.J. Super. 455, 460 (1975).

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[contraband] was/were found; whether defendant possessed other [contraband] on his/her person or property when the [contraband] was/were found; [any other evidence deemed part of the totality of circumstances].⁷

In summary, the State must prove more than defendant's mere presence at the time that the [contraband] was/were found. There must be other circumstance(s) tying defendant to the [contraband] in order for the State to prove constructive possession beyond a reasonable doubt.⁸

If the State has proven each element of this crime beyond a reasonable doubt, then you must find defendant guilty.

On the other hand, if the State has failed to prove any element beyond a reasonable doubt, you must find defendant not guilty.

⁷ State v. Randolph, 228 N.J. at 590-93, citing State v. Palacio, 111 N.J. 543, 549-54 (1988) and State v. Shipp, 216 N.J. Super. 662, 664-66 (App. Div. 1987). See Palacio, Shipp, and State v. Montesano, 298 N.J. Super. 597, 615 (App. Div. 1997), certif. denied, 150 N.J. 27 (1997), for circumstances more specifically related to presence in or near an automobile in which drugs are found.

⁸ State v. Whyte, 265 N.J. Super. 518, 523 (App. Div. 1992), aff'd o.b. 133 N.J. 481 (1993); Jackson, 326 N.J. Super. at 280.